IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1064 OF 2004

IN

NOTICE OF MOTION NO.4860 OF 2004

IN

B.C.C.C. L.C. SUIT NO.5524 OF 2004

ALONG WITH

CIVIL APPLICATION NO.1505 OF 2004

Manojkumar Kusumchand Jhaveri & Anr....Appellants

Versus

Municipal Corporation of Gr.Bombay ...Respondent

.....

Mr.Ashok M.Saraogi for Appellants.

Mr.J.Xavier for Respondent.

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CORAM: A.M.KHANWILKAR, J.

JANUARY 27, 2006.

P.C.

1. Heard Counsel for the parties. Perused the relevant records.

2. This Appeal takes exception to the order passed by the City Civil Court, Mumbai dated 1st December 2004 in L.C. Suit No.5524 of 2004, refusing to grant ad-interim relief during the pendency of Notice of Motion for temporary injunction. In all probability, even the Notice of Motion filed in the said Suit, on which the impugned order came to be passed, must have been finally decided.

3. In any case, at this distance of time, there is no reason to depart from the view expressed by the lower Court as recorded at page 11 that no prima facie case is made out by the Appellants that they have exclusive right over the passage. Besides, the material on record indicates that the adjoining shop owners have access from the passage. The reasons which weighed with the Court below was a possible view and good enough to reject the prayer for ad-interim injunction. In this case, the impugned order passed by the lower Court has not been interdicted by this Court so far. At least there is nothing on record to support that position. Hence, this Appeal should fail. The

same is dismissed.

4. It is made clear that if the Notice of Motion has not been finally decided so far, the Trial Court shall expedite the hearing of that Motion to be decided on its own merits in accordance with law.

5. In view of the above order, Civil Application also stands disposed of.

A.M.KHANWILKAR, J.